IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.195 OF 2006

In

NOTICE OF MOTION NO.2925 OF 2004

In

SUIT NO.1694 OF 2004

M/s.Jorden Electronics : Appellant

(Orig. Plaintiff)

V/s.

M/s.Seven Arts Pictures & Anr. : Respondents

(Orig. Defendants)

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Mr.H.N.Thakore i/b. M/s.Thakore Jariwala & Associates for the appellant.

Mr.A.Y.Bookwala i/b. M/s.Ranjit & Co., for respondent no.1.

Mr.Rajiv Narula i/b. M/s.J. Narula & Associates for respondent no.2.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : SEPTEMBER 26, 2006.

P.C.

1. We heard Mr.H.N.Thakore, the Advocate for the appellant. We also perused the two documents at pages 163 and 164 which, according to the Advocate for the

appellant, prove that the letter dated 2.12.2003 was sent and received by the defendant no.1.

2. The learned trial Judge recorded a prima facie finding that the plaintiff has failed to establish that the letters dated 2.12.2003 and 1.1.2004 were actually received by the 1st defendant. As a matter of fact, the documents which are now relied upon by the plaintiff from the appeal at pages 163 and 164 were never produced before the learned trial Judge. All along the case of the 1st defendant has been that these two letters dated 2.12.2003 and 1.1.2004 are fabricated. The fact that no proof was produced before the learned trial Judge that the said two letters received by the defendant no.1 lends credence to the case of the 1st defendant that the two letters are fabricated. The two documents at pages 163 and 164, are prima facie doubtful. As to who received the letter dated 2.12.2003 which was sent by hand delivery is not even disclosed by the plaintiff, except the statement that some office boy received the same.

3. The plaintiff, thus, prima facie, failed to establish that they offered an amount of Rs.6,50,000/- to the 1st defendant within the time (120 days) from the date of the agreement dated 5.9.2003.

4. No case for interference with the impugned order is made out.

5. Appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.